


Memorandum

Date: October 27, 2008

Reply to Attn. of: Gorsky, x69532

Subject: Memorandum for the File


From: Susan Gorsky
Regulations Officer
Office of Hazardous Materials Standards

To: Docket File No. PHMSA-2007-28119

The Office of Hazardous Materials Safety is currently evaluating comments on a notice of proposed recommended practices for bulk loading and unloading of hazardous materials in transportation published on January 4, 2008 (Notice No. 07-9) and examining the option of issuing a notice of proposed rulemaking to enhance the safety of transportation operations involving the loading and unloading of hazardous materials to and from bulk packages. The Associate Administrator for Hazardous Materials Safety has corresponded with stakeholders concerning the potential incorporation by reference of certain industry standards into the Hazardous Materials Regulations (HMR: parts 171-180). Attached to this memorandum are comments from a representative of the Dangerous Goods Advisory Council concerning the potential incorporation of certain industry standards into the HMR.

Eichenlaub, Kurt <PHMSA>

From: Gorsky, Susan <PHMSA>
Sent: Monday, October 27, 2008 2:57 PM
To: Eichenlaub, Kurt <PHMSA>; DerKinderen, Dirk <PHMSA>
Cc: Mazzullo, Ed <PHMSA>; Solomey, Joe <PHMSA>; Hilder, Mike <PHMSA>
Subject: FW: DGAC Conversations on loading and unloading
Attachments: DGAC_L_UL_petition.pdf

From: Willke, Ted <PHMSA>
Sent: Thursday, October 23, 2008 6:37 PM
To: Johnson, Carl <PHMSA>; Edwards, Krista <PHMSA>; Kunz, David <PHMSA>
Cc: Richard, Bob <PHMSA>; Mazzullo, Ed <PHMSA>; Gorsky, Susan <PHMSA>; Solomey, Joe <PHMSA>; Hilder, Mike <PHMSA>; Schreiber, Tonya <PHMSA>; Willke, Ted <PHMSA>
Subject: DGAC Conversations on loading and unloading

Al Roberts, Frits Wybenga, and Rick Barlow, representing the Dangerous Goods Advisory Council (DGAC), called me today in separate conversations (1) to express an urgency for PHMSA to move ahead with rulemaking on loading-unloading along the lines of their petition dated November 19, 2007, and (2) to oppose incorporation of AAR Pamphlet 34 on loading-unloading of rail tank cars.

In my call with Frits, I learned of conversations Frits (and possibly other members of DGAC) had with NTSB and CSB. In separate conversations, DGAC received informal assurance that the attached petition on loading-unloading, if incorporated into the HMR, would be "responsive" to NTSB and CSB recommendations to PHMSA. Frits said they spoke with Bob Chipkevich and Bob Trainor at NTSB. They spoke with Gary Fisher at CSB.

Please note that the DGAC petition was submitted before PHMSA published the Federal Register Notice (FRN) on a "Recommended Practice" on loading-unloading in January 2008. The petition and the FRN take are similar in approach, although DGAC identified specific provisions in which they believe the Recommended Practice could be improved. In its public comments on the FRN, DGAC opposes the incorporation of standards specifically citing the AAR (Association of American Railroads) Pamphlet 34 on loading and unloading of rail tank cars. DGAC also believes the Recommended Practice, if adopted into the HMR, would not be a significant rule. DGAC believes the AAR standard is too restrictive and needs to be modified to be acceptable to affected shippers.

In other words, Frits maintains that we could satisfy NTSB and CSB recommendations without incorporating any national consensus standards.

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From: Frits Wybenga [mailto:fwybenga@dgac.org]
Sent: Monday, November 19, 2007 2:09 PM
To: Willke, Ted <PHMSA>
Cc: Richard, Bob <PHMSA>; Gerard, Stacey <PHMSA>; Alan Roberts; Mike Morrisette
Subject: DGAC petition on loading and unloading

Hi Ted – Hope you arrived back on the East Coast in good order after the Sante Fe conference. We very much appreciated your and Bob's participation. You both contributed substantially to a very successful conference.

Attached is the DGAC petition that we discussed. While not stated in the letter, the proposed regs text was

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discussed with NTSB's Bob Chipkevich and Bob Trainor. All changes that they asked for were made and while they can not commit their board members (and didn't want us to include their support in a letter), they felt the proposal met NTSB concerns/recommendations.

This petition was prepared with the full knowledge and agreement of the Interested Parties group on loading and unloading.

While you stated that the notice requesting comments was ready to go out, the idea of including the DGAC proposal as part of the notice was mentioned by Al at the conclusion of Bob's presentation at the conference. Bob responded by saying this would be considered. In my mind this would be a good way of getting an early read from the public on the petitioned proposal and put you that much further ahead when you get to the NPRM stage without actually committing to the approach at this time.

All the best - Frits

Eichenlaub, Kurt <PHMSA>

From: Gorsky, Susan <PHMSA>
Sent: Monday, October 27, 2008 2:56 PM
To: Eichenlaub, Kurt <PHMSA>; DerKinderen, Dirk <PHMSA>
Cc: Mazzullo, Ed <PHMSA>; Solomey, Joe <PHMSA>; Hilder, Mike <PHMSA>
Subject: FW: Call on Loading-Unloading (RB)

From: Willke, Ted <PHMSA>
Sent: Monday, October 27, 2008 2:53 PM
To: Gorsky, Susan <PHMSA>; Mazzullo, Ed <PHMSA>
Cc: Richard, Bob <PHMSA>
Subject: Call on Loading-Unloading (RB)

For the record, Rick Barlow called from Houston this morning to convey his opinion on AAR Pamphlet 34 on loading-unloading of rail tank cars. He said that AAR 34 is not up to his standards as to what a national consensus standard should be. While it may be useful as general guidance, it is uneven in terms of "shoulds" and "musts". Rick referred back to the DGAC public comments in response to the January FRN. I invited him to put his comments into writing and send them to me if they are not reflected in the DGAC comments. Ted

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